

APPEAL NO. 051318
FILED JULY 20, 2005

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 17, 2005. The hearing officer resolved the disputed issues by deciding that: (1) the appellant/cross-respondent (claimant) sustained a compensable injury on _____; (2) that the compensable injury includes an injury to the left knee consisting of internal derangement, medial meniscus tear, anterior cruciate ligament (ACL) tear, ACL disruption, complex tear of the undersurface of the posterior horn of the medial meniscus and a small joint effusion; (3) that the compensable injury does not include degenerative arthritis; and (4) that the claimant has disability beginning on April 9, 2005, and continuing through the date of the CCH. The claimant appealed, disputing the determinations that the compensable injury did not extend to include degenerative arthritis and that the claimant did not have disability prior to April 9, 2005. The respondent/cross-appellant (carrier) responded, urging affirmance of the determinations challenged by the claimant. The carrier filed a cross-appeal, arguing that it was error for the hearing officer to determine that the claimant sustained a compensable injury and that the compensable injury extended to internal derangement, medial meniscus tear, ACL tear, ACL disruption, complex tear of the undersurface of the posterior horn of the medial meniscus and a small joint effusion of the left knee. The carrier also contends that since the claimant did not sustain a compensable injury, he cannot by definition have disability. The claimant responded, contending that there was sufficient evidence in the record to support the determinations disputed by the carrier.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant testified that he was working for employer on _____, reinforcing boxes. He testified that the task required him to work on his knees and that after working for over four hours that day he felt pain in the back of his left knee. The claimant explained that he was kneeling down inside the box and felt pain when he stood up. The claimant continued working that day and the following day but on (two days after date of injury), his knee was red and swollen and he reported the incident and was sent to the doctor. He testified that the doctor examined his knee and administered a drug test. It was undisputed that the claimant was terminated on September 13, 2004, and that the drug test he took yielded a positive result. Intoxication was not an issue before the hearing officer to decide. The claimant acknowledged that he applied for unemployment benefits and received one check but that the employer successfully disputed his eligibility for unemployment benefits. There is an operative report in evidence, which reflects that the claimant had surgery to his left knee on April 8, 2005. The operative report notes that a large bucket-handle tear of the medial meniscus was discovered during surgery. The procedure performed included

diagnostic arthroscopy of the left knee with partial medial meniscectomy and debridement of tear of the ACL.

The hearing officer was persuaded that the evidence established that the claimant sustained a compensable injury noting that the claimant's testimony revealed that he had been kneeling and got up when he experienced pain. Additionally, the medical records from (Dr. G) opined that the problems with the claimant's knee were due to the work-related injury that occurred on _____.

Whether the claimant sustained a compensable injury and the extent of that injury were questions of fact for the fact finder. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record reveals that the hearing officer's compensable injury and extent-of-injury determinations are so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse the injury and extent determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer found that the claimant had disability beginning on April 9, 2005, and continuing through the date of the CCH. However, it is undisputed that the claimant underwent left knee surgery on April 8, 2005. Given our affirmance of the compensable injury determinations and the determination that the injury extends to the conditions that necessitated the surgery of April 8, 2005, the hearing officer's determination that the claimant's disability did not begin until April 9, 2005, is against the great weight and preponderance of the evidence. We reverse the determination that the disability began on April 9, 2005, and render a new determination that disability began on April 8, 2005, and continued through the date of the CCH.

We affirm the determination that the claimant sustained a compensable injury on _____, and that the compensable injury includes an injury to the left knee consisting of internal derangement, medial meniscus tear, ACL tear, ACL disruption, complex tear of the undersurface of the posterior horn of the medial meniscus, and a small joint effusion but does not include degenerative arthritis. We reverse the determination that the claimant's disability began on April 9, 2005, and render a new determination that the claimant has disability beginning on April 8, 2005, and continuing through the date of the CCH.

The true corporate name of the insurance carrier is **ST. PAUL FIRE AND MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701-3232.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge